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PS Form 3800, April 1995

1 Now, Your Honor, I move the Court
2 to --

3 THE COURT: Did you want a ruling?

4 MR. TINKER: I'm sorry?

5 THE COURT: Do you want a ruling?

6 MR. TINKER: Yes. I'd like a ruling.

7 THE COURT: I deny it.

8 MR. TINKER: Your Honor, at this time
9 I do ask the Court to dismiss the jury panel
10 because the prosecutor's office has systematically
11 excluded a specific racial group from the jury
12 panel. They've excused --

13 THE COURT: Excuse me.

14 Can I have the strike list?

15 Mr. Tinker, I've just been informed
16 that -- this is back on the broadcast business --
17 I've just been informed that for some -- I
18 certainly would like to hear it, if you want to
19 visit further, but I've just been informed that all
20 the audio is restricted to the media, and it was
21 restricted to the media room.

22 MR. TINKER: I'm going to call a
23 witness up from the media.

24 THE COURT: The Court acknowledges
25 that it's going to the media trucks.

1 But to the best of my knowledge, it
2 was not being distributed; and, also, I'd like to
3 state that anybody in that area has to have a red
4 badge.

5 MR. TINKER: Well, Arnold Garcia
6 didn't have a red badge, to which he'll testify.
7 Some of the jurors were standing on the balcony.

8 THE COURT: Excuse me. Mr. Tinker,
9 we will not have a conflict.

10 MS. LA FLEUR: I will check on that.

11 THE COURT: I am reactivating the --
12 is it being transmitted now?

13 MR. TINKER: Again, I think before we
14 went back to that issue, Your Honor, we were -- I
15 had objected to the impaneling of the jury under
16 the Batson Case because the prosecution had
17 systematically excluded the African Americans from
18 the jury. My records reflect that's Juror Nos. 13,
19 21, 26, 34, 38, 39, 48 and 49.

20 THE COURT: Okay.

21 MR. SKURKA: May I be heard on this,
22 Judge?

23 THE COURT: Certainly.

24 MR. SKURKA: First of all, Your
25 Honor, we again -- we reiterate what Mr. Valdez

1 MR. SKURKA: He wants the record to
2 reflect that we systematically excluded Blacks?
3 I'm telling the Court that is not what we did, and
4 I object to that insinuation because of the thing
5 that we mentioned earlier.

6 THE COURT: Okay.

7 Anything further?

8 MR. TINKER: Not on this issue, Your
9 Honor.

10 THE COURT: All right. You said you
11 wanted to argue?

12 MR. TINKER: Your Honor, I just --
13 it's my position they have the burden once we show
14 that they -- in almost all the African-Americans or
15 the racial group has been excluded they've got the
16 burden of proof to show there was some other reason
17 other than race that caused those folks to be
18 stricken. They haven't done so, so I request,
19 again, that this panel be quashed.

20 THE COURT: Overruled.

21 Next matter. We'll be right there in
22 a second. We've got five minutes.

23 MR. TINKER: Do we have five minutes
24 to run to the --

25 THE COURT: You've got five minutes

1 objection.

2 The Court started off this hearing by
3 saying, "Mr. Tinker, I saw no inclination for you
4 to make a Batson Challenge." That's very clear in
5 the Court's own mind that that was not his intent
6 at that time.

7 Secondly, Judge, we -- our objection,
8 too, is that he claimed that we're doing a
9 systematic discrimination of Afro-Americans. And
10 the Court -- I guess it's pretty obvious on the
11 record, but the defendant in this case is not an
12 Afro-American. The case law, again, cited in Perry
13 vs. State, 770, 950, says that Batson error is
14 limited to allegations of strikes of members of the
15 defendant's own race. Defendant could not raise
16 Batson error as to exclusion of members of other
17 races.

18 THE COURT: All right. But, just out
19 of an abundance of caution, do you wish to state in
20 the record your reasons for those strikes?

21 MR. SKURKA: If the Court requires me
22 to.

23 THE COURT: I'm not requiring it.

24 MR. SKURKA: First of all, the burden
25 is on him to show that there is an inference of

1 MR. TINKER: And they understand this
2 applies to opening statements as well, Your Honor?

3 MR. VALDEZ: To what?

4 MR. TINKER: Opening statements as
5 well. It goes to that.

6 MR. VALDEZ: I understand.

7 THE COURT: All right.

8 Incidentally, while we're on the
9 subject of opening statements, how much time do
10 you-all want to make your opening statements,
11 Mr. Valdez?

12 MR. VALDEZ: No longer than 20
13 minutes, Your Honor.

14 THE COURT: Mr. Tinker?

15 MR. TINKER: I might take a little
16 longer than that, Your Honor.

17 THE COURT: Thirty minutes? Each
18 side will have 30 minutes, but there is no
19 cumulative.

20 MR. TINKER: I can't save some of
21 it?

22 THE COURT: No.

23 Mr. Tinker.

24 MR. TINKER: Yes. Your Honor, with
25 regard to the -- again, as the Court recalls that I

1 approached the bench and wanted to make some
2 objections to the impaneling of the jury, and Your
3 Honor permitted me to do that after the jury was
4 seated. Do you recall that?

5 THE COURT: Okay. That was a very
6 important question.

7 I want both of you gentlemen to be
8 very careful from now on about any contact with the
9 Court, particularly if it's on the record, when
10 both sides are not present, because I thought
11 someone from the State was present.

12 MR. VALDEZ: I was present, Your
13 Honor. That didn't happen. It's on the record.
14 It didn't happen.

15 THE COURT: Have you already examined
16 the record?

17 MR. VALDEZ: No, sir, I haven't, but
18 that didn't happen.

19 THE COURT: What the Court recalls to
20 be on the record, Mr. Tinker, I had no inclination
21 about passing the challenge at the time you
22 admitted that.

23 MR. TINKER: Your Honor, let me say
24 this: I had no inclination as to pass the
25 challenge because I hadn't seen the color of the

1 faces; and then, as they were seated, at the time
2 that they did, I knew that I should do that, and I
3 made it.

4 THE COURT: Well.

5 MR. VALDEZ: Your Honor, what
6 happened yesterday at the sidebar is that
7 Mr. Tinker wanted to reserve -- request from the
8 Court additional preemptory challenges.

9 He said, "Can I do that afterwards?"

10 The Court said, "Yes, you can.

11 I will reserve that until later."

12 He didn't say anything about passing.

13 THE COURT: Excuse me. He did say
14 something about the normal objection to the failure
15 of the Court to grant his challenges for cause,
16 which is actually part and parcel of the request
17 for additional --

18 MR. VALDEZ: Your Honor, if I may
19 address the Court? When the Court called us up
20 there to review the strikes, the list, the final
21 list, Mr. Tinker went up there and I went up there,
22 we reviewed the list and Mr. Tinker's only comment
23 was making fun of the State of Texas because we had
24 own struck nine people. That was the only comment
25 he made. He didn't object to the panel, he didn't

1 say anything. That was the proper time to make a
2 Batson objection. Anything later than that, after
3 the jury had been impaneled, is not timely, Your
4 Honor, and nothing's reserved.

5 THE COURT: All right.

6 MR. TINKER: Your Honor, my position
7 is that it is reserved. I asked the Court whether
8 I would have an opportunity, Your Honor wanted to
9 go ahead and get the jury seated.

10 And I said, "Well, can I take these
11 matters up after the jury is seated?"

12 And it's my recollection that you
13 said "Yes," and I'd like to take them up now.

14 THE COURT: I'm going to allow you to
15 take them up. It's actually up to somebody else to
16 determine whether they were reserved or not. As
17 Mr. Tinker knows, I make no warrants about
18 anything.

19 MR. TINKER: Your Honor, further, I
20 would like to address the issue with regard to the
21 challenges for cause that I made. The Court will
22 recall that when certain jurors were questioned in
23 dealing with the -- first, the bias or prejudice
24 against the probation laws, Your Honor denied. I
25 told the Court I wanted additional challenges, you

1 previous instructions; that you're not to discuss
2 the case even among yourselves until the proper
3 time, which is at the end of the case; that you're
4 not to discuss the case with anyone whomsoever and
5 it's best not to even indicate the case because of
6 the nature of the case; I also instruct you, as I
7 previously instructed you, not to view police or
8 news reports, press or media checks, any media.
9 And you've demonstrated appropriate behavior before
10 and indicated your willingness to abide by that.
11 These are very important instructions in this
12 case.

13 Those are the extent of my
14 instructions at this time and I'm going to dismiss
15 you shortly and ask that you return tomorrow at
16 9:00 o'clock. I'm going to direct you into the
17 jury room where there will be some additional
18 instructions concerning your comings and goings in
19 the courtroom. So thank you for your attention and
20 I will now leave you with the court personnel.

21 (Jury panel released - 6:07 p.m.)

22 THE COURT: All right. We're still
23 in session.

24 Mr. Tinker, you indicated that you
25 had some objections?

1 MR. TINKER: Well, first, Your Honor,
2 I want to voice my objection, we have 11 law
3 enforcement people, I've made a record of that, I
4 think it gives the jury the impression that my
5 client is dangerous. They're not guarding the
6 door, they're guarding Yolanda, and I object to
7 that. And I object to what it -- how it damages
8 her in her -- it's to receive a fair trial, it's
9 going to cause this jury to believe that some way
10 she is a serious criminal and likely to escape.

11 Secondly, Your Honor, with regard to
12 the jury selection, I just want to make a note that
13 the juror -- the prosecution has struck all but one
14 of the African-Americans that were on the panel.
15 They systematically, in my view, have stricken the
16 Blacks, African-Americans, from this panel.
17 There's only one African-American there. They have
18 struck eight African-Americans from the panel.
19 They struck 13, 21, 26, 34, 38, 39, 48, and 49. We
20 demand that the panel be quashed because of the way
21 they did their striking, and they did it in a
22 prejudicial way by striking racially.

23 THE COURT: Response?

24 MR. SKURKA: First of all, Judge,
25 this is an untimely motion. The jury is sworn and

1 in the box. That's my first response.

2 THE COURT: Well, you weren't present
3 but your co-counsel would have been.

4 MR. VALDEZ: Pardon me, Your Honor?

5 THE COURT: That was preserved on the
6 record here.

7 MR. TINKER: I think it was. I asked
8 if I could exercise my challenges.

9 THE COURT: Someone was here.

10 MR. TINKER: I said, "Could I do that
11 after?"

12 THE COURT: First of all, I think
13 it's been a long day and if there's any question
14 about being able to do it later it's not going to
15 make any difference if you do it in the morning.

16 MR. TINKER: I'm right. The only way
17 that they can recover from this is if Your Honor
18 rules in our favor is to see the African-Americans
19 that we challenged if there is -- there's still a
20 chance -- that were challenged by them get those
21 jurors back and put them on the jury. Secondly,
22 then, Your Honor, I ask to quash the entire panel.

23 THE COURT: Defense, there's no
24 reason why it can't be done in the morning.

25 MR. TINKER: With regard to the other

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1 MR. TINKER: Your Honor, the next
2 motion I have is a -- let me go through these motions --
3 for the criminal records of the witnesses. I have
4 prepared a Motion Requesting the Criminal Records of the
5 Witnesses. I have also prepared an order. That Order has
6 attached to it those witnesses who that I know, that there
7 have been indications will be witnesses in this case.
8 Those that I could ascertain the date of birth, I have
9 prepared the date of birth and all I request, Your Honor,
10 is sometimes prosecutors say: Well, why should we do Mr.
11 Tinker's work?

12 All I'm requesting is that you sign the order
13 which I have attached authorizing me to go to law
14 enforcement agencies and get that information. And I
15 would just request, I guess, a response from counsel.

16 THE COURT: Yes.

17 MR. SKURKA: I'm ready to respond to
18 that, Judge. The case law in this area indicates that he
19 is not entitled to just a flat-out fishing expedition for
20 a search of peoples' criminal records. The only thing
21 that is admissible against these people are impeachable
22 materials; that is, that they have been convicted of a
23 felony or a crime involving moral turpitude. He has given
24 me a laundry list of all the witnesses, basically, who I
25 have subpoenaed, the civilian witnesses, and he wants to

1 know if they have a criminal record or not.

2 My response to that, Your Honor, is their
3 criminal record, just blanket criminal record is not
4 discoverable. It may show arrests, it may show crimes
5 that do not fit into this category of impeachable offense.
6 I know under Brady that I have an obligation to hand him
7 things which are impeachable things. If I have a witness
8 who has been convicted of two felonies before, I have to
9 tell him about that. If I have a witness that's been
10 convicted of theft, I have to tell him about that.

11 THE COURT: That's any theft, I take
12 it?

13 MR. SKURKA: That's correct. And
14 that's what the law says, Judge.

15 My proposal to answer this, Your Honor, is
16 not to give him directly, not to let him have access to
17 criminal law records. TCIC, NCIC, it's very closely
18 guarded by the law enforcement personnel and there is all
19 kinds of rules about who they can give that stuff to.

20 My suggestion to the Court is, that if the
21 Court grants this order, is that I prepare a -- or have my
22 investigator prepare a criminal history list, a sheet, a
23 rap sheet on each of these people if they have it, or
24 just -- I hate to say "rap sheet," because that makes it
25 sound like they all have records and they probably don't.

1 That report, that inquiry made of the
2 computer, TCI, NCI computer report should then be turned
3 over to the Court en camera, and then the Court can
4 determine whether any of those items are discoverable,
5 meaning impeachable offenses that should be turned over to
6 the defense. I don't think he should be allowed to know
7 if somebody has got a DWI from 10 years ago, or for some
8 crime that -- or been arrested that didn't result in a
9 conviction that he cannot use --

10 THE COURT: Yes.

11 MR. SKURKA: And again, I will tell
12 you, I don't know if these people have criminal records or
13 not. My guess is, they don't.

14 THE COURT: I think I understand.

15 Your response.

16 MR. TINKER: My response is this, Your
17 Honor. It's not only when people have prior convictions
18 that, that prior problems with the law is admissible.
19 Davis --

20 THE COURT: What's that? What's --

21 MR. TINKER: That's a -- there's a
22 pending charge against a person who had, a young man who
23 has a pending charge. He has not be convicted of it, but
24 because of the pending charge it might show why he would
25 testify favorably for the prosecution --

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1 THE COURT: Well, let me interrupt.

2 MR. SKURKA: I didn't understand that.

3 THE COURT: Can we divide this between
4 the issue of, the procedural issue that he is suggesting,
5 where he presents it to the Court, and then let you
6 address the Court on what's --

7 MR. TINKER: Your Honor, here is, I
8 think the probably most efficient way to do it. I think
9 that there are certain things that he has already agreed
10 that we're entitled to, and those are convictions and --
11 convictions for felonies, convictions, and theft. I
12 suggest that he should provide that. What I worry about,
13 I know -- and I have done it in the past -- when I have
14 been given an order such as this, what they get out of the
15 NCIC doesn't really show what's there, because what
16 happens is you can be convicted of theft in County Court
17 many times -- particularly if it's several years old, and
18 then it never does get in the computer. That's only in
19 recent times they started doing that. But if I take the
20 order, or if anybody takes the order that I'm asking Your
21 Honor to sign, to the Sheriff's Department in the
22 community where a witness might live, if they don't live
23 here, you can get substantially more information than you
24 can if you just rely on what they get out of the NCIC
25 reports.

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1 THE COURT: Well, Counsel, can't you
2 also get that from County Clerks and District Clerks?

3 MR. TINKER: No, because what happens,
4 Fred Mannins (phon.sp.), who is the records keeper for the
5 Sheriff's Department, you can take an order like this and
6 it just amazing what he will have that they don't get when
7 they go into NCIC. So my suggestion, first, to speed it
8 up is that Your Honor get some -- I don't mind if you get
9 some member of your staff or that they get some member of
10 their staff and go and get that information from the
11 Sheriff's Department here, all of it, on any of these
12 folks and get back to us.

13 I also am concerned about maybe one or more
14 of the witnesses may have been convicted, gone to the
15 penitentiary and have a pardon. My position is that if
16 that has occurred that I'm still entitled to know it. And
17 it won't show up. If that's true, it's not going to show
18 up on their reports. So the second thing I ask is that
19 they inquire of each of the witnesses that they intend to
20 call, to see whether or not there is that kind of
21 conviction.

22 MR. SKURKA: Any type of conviction
23 that is done away with by a pardon, Judge, I'm pretty sure
24 is not admissible anyway. And I think that's in the rules
25 of evidence and the Court is probably aware of that.

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1 Again, what that is trying to do, Judge, is going on a
2 fishing expedition. The law says that I have to give him
3 stuff, and Brady material that is either exculpatory or
4 impeachable evidence in discovery. Criminal records of
5 witnesses are not discoverable unless they have that type
6 of information. If a person has a sheet, you know, and it
7 has 20 arrests that have not resulted in a conviction, he
8 can't use that and so he should not be able to get that
9 ahead of time on a fishing expedition.

10 MR. TINKER: That's --

11 MR. SKURKA: May I finish, Mr. Tinker?

12 THE COURT: Yes.

13 MR. SKURKA: The other thing I should
14 say, it is not proper, Judge, to have a clerk or one of
15 your staff -- not that I don't trust them or something
16 like that, but TCIC, NCIC, they're guarded pretty closely
17 by the DPS and you have to have a person that can be
18 accessed on to that machine like one of our investigators
19 or dispatcher or whoever, at the jail. And TCIC, NCIC is
20 pretty complete.

21 Now, if that shows up something he wants to
22 develop further I can understand that, too. But, you
23 know, somebody who has been pardoned by parole -- I'm
24 sorry -- pardoned by the governor or something like that,
25 that is not going to be impeachable anyway.

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1 Again, Judge, I'd ask the Court to follow the
2 procedure of me making the inquiry. If he has specific
3 names -- and he has to have the specific request, which he
4 has -- specific names for me to run that history, give it
5 to you, and you give him only the thing that is
6 discoverable, which are those things that are impeachable.
7 And I don't even mind asking about if they have pending
8 charges, too. I think that's probably --

9 THE COURT: Is that going to show up in
10 NCIC?

11 MR. SKURKA: Yes. That's an
12 appropriate thing, Judge. If there is somebody charged
13 with burglary in my office and I'm using them as a fact
14 witness against somebody else, that is the proper ground
15 for cross examination.

16 THE COURT: All right.

17 MR. SKURKA: And I think that's
18 correct, and I will give them anything that has pending
19 charges --

20 THE COURT: All right.

21 MR. TINKER: We're not asking Your
22 Honor, I'm not asking Your Honor to decide what is or is
23 not something that I can use. I just want to know -- I
24 mean, if I am not told about a pending charge, then -- or
25 one that was dismissed recently -- and the Court will

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1 recall -- and it's not this prosecutor -- a case called
2 George Henley (phon.sp.) in which we were in your Court,
3 and they had -- the star witness in the case, they had
4 pending charges sitting over there, and they didn't reveal
5 it until about halfway through the trial. And I'm just
6 saying, that's why I don't like to rely on the prosecutors
7 to make those kinds of decisions. That's why I want Your
8 Honor to look at it.

9 But I think that that's a good way to start
10 it, and if that is not satisfactory, then I will reurge my
11 motion.

12 THE COURT: All right, I think so, too.

13 MR. SKURKA: So the Court's ruling is
14 that the --

15 THE COURT: I'm accepting your
16 proposal.

17 MR. SKURKA: Okay. Thank you, Your
18 Honor.

19 THE COURT: So it's granted as revised
20 in the record.

21 Next?

22 MR. TINKER: Your Honor, I have a
23 motion here to produce and inspect the Grand Jury
24 transcripts. I'm told that they have no transcript, but
25 as the Court recalls, I was attempting to ask the witness

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1 to the defense prior to trial.

2 THE COURT: Let me see that.

3 MR. SKURKA: There needs to be a
4 clarification on that, Judge. It wasn't
5 actually provided to the defense. What
6 happened is, as the Court recalls, the pretrial
7 motion hearing that we had, when they asked for
8 information about criminal histories, I asked
9 the Court to have an in camera inspection of
10 those --

11 THE COURT: Yeah.

12 MR. SKURKA: -- histories before
13 we do that.

14 THE COURT: That's correct.

15 MR. SKURKA: And I'd like the
16 record to reflect that the D.A.'s office took
17 all those records to the Court, who reviewed
18 them, at the time, before he was able to
19 determine whether any of them were admissible
20 to be turned over to the defense.

21 So that was not technically tendered
22 to the defense counsel. It was tendered to the
23 Court in an in camera inspection.

24 MR. TINKER: Well, that's the
25 one in October.

1 MR. SKURKA: Yes, sir. The
2 first one.

3 THE COURT: But, for the record,
4 it does not show a "hit," to use the
5 vernacular.

6 MR. SKURKA: That's correct,
7 Your Honor.

8 THE COURT: All right.

9 MR. SKURKA: We'll clarify that,
10 Your Honor.

11 THE COURT: Proceed.

12 MR. MCGUIRE: And then,
13 Defendant's Exhibit 6, for purposes of the
14 record, is the actual record of the Norma
15 Martinez who testified as a witness in this
16 case. Whatever the date is.

17 MR. SKURKA: I think it was
18 11/27. It shows at the top right hand, Judge,
19 when it was actually run.

20 Q. (By Mr. McGuire) After getting the
21 photograph of the witness from the sheriff's
22 department, did you conduct an investigation
23 through the public records of the county
24 clerk's office to see what you could find out
25 about the charges which Miss Martinez had been

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1 records of witnesses, and also, motions
2 requesting discovery of any exculpatory
3 materials?

4 A. There were.

5 Q. And in response to those motions, were you
6 provided any records by the district attorney's
7 office indicating that Norma Martinez had a
8 criminal record?

9 A. We were not.

10 Q. Were you provided -- or were you able to
11 obtain from the sheriff's office,
12 independently, any criminal records of
13 Norma Martinez, either before trial or after
14 trial?

15 A. Not before trial.

16 Q. Okay. They would not -- After trial, did
17 the sheriff's office give you criminal records,
18 or they just showed you --

19 A. They verified the fact that warrants were
20 outstanding against her and I obtained a
21 picture, and, basically, that was it.

22 Q. They would not give you a copy of the TCIC
23 or NCIC printout.

24 A. They would not.

25 MR. MCGUIRE: Your Honor, the

END OF DIRECT EXAMINATION

1 the police prior to the trial?

2 A. I was.

3 Q. You were provided a copy of that by the
4 district attorney's office?

5 A. Yes, we were.

6 Q. I'd like to ask you to examine this
7 statement and tell me if it is a true and
8 accurate copy of the statement that you were
9 provided by the district attorney's office
10 prior to trial.

11 A. This is one of them, yes.

12 MR. MCGUIRE: Okay. Your Honor,
13 we'd offer this into evidence, for purposes of
14 this hearing.

15 MR. SKURKA: We have no
16 objection.

17 MR. MCGUIRE: I think this is
18 Defendant's Exhibit 3, I believe.

19 THE COURT: Admit.

20 THE COURT REPORTER: It's four.

21 THE COURT: The Court admits the
22 document.

23 Q. (By Mr. McGuire) Prior to the time of the
24 trial had the defense filed discovery motions
25 requesting the discovery of the criminal

1 So, essentially -- And y'all had both of those
2 statements before trial, correct?

3 A. Yes.

4 Q. And both of those statements revealed her
5 name to be Norma Maria Martinez, the way it is
6 printed on and she signed it, correct?

7 A. That's what it -- that's how it's signed.

8 MR. SKURKA: I'll tender
9 State's Exhibit 1 to defense counsel and offer
10 it into evidence; that being the second
11 statement of Miss Martinez.

12 MR. MCGUIRE: We have no
13 objection.

14 THE COURT: Admit.

15 MR. SKURKA: That's all the
16 questions I have, then.

17 THE COURT: All right. Anything
18 further of this witness on this?

19 MR. MCGUIRE: May we have just a
20 moment, Your Honor?

21 (Off-the-record discussion.)

22
23 R E D I R E C T E X A M I N A T I O N

24 BY MR. MCGUIRE:

25 Q. A capias is an order of a court to arrest

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1 Q. Do you know his last name?

2 A. No, I don't.

3 Q. But you know he is a maintenance man?

4 A. Yes, sir.

5 Q. Was he standing there near you or with you?

6 A. He was standing there with me.

7 Q. So Trinidad Martinez was standing, doing what?

8 A. He was opening the door.

9 Q. Was it right there in front of 128?

10 A. Right.

11 Q. And when they have two numbers in one of these
12 squares, all that means is that 128 would be
13 downstairs and 228 would be upstairs?

14 A. Yes, sir.

15 Q. So you were down at 128, and you had called to
16 get Mr. Espinoza to help you open the door there?

17 A. Yes, sir.

18 Q. Because he had a key and you didn't?

19 A. Yes, sir.

20 Q. And you were standing there side by side at the
21 time you hear this boom?

22 A. Yes, sir.

23 Q. I'm going to put Trinidad here. "Was standing
24 there at the time of boom."

25 Now, did you see what he did at the

1 it's in between right here because I was running.

2 Selena was going through here, through here.

3 Q. Okay.

4 A. You see, and Selena ran.

5 Q. Along in here?

6 A. Right. Through the street, through the street,
7 and Selena ran right here.

8 Q. If you move just a little back so everybody can
9 see.

10 A. I'm sorry.

11 Q. And could you hear the screams of Selena?

12 A. Yes.

13 Q. Could you hear anything that was said over here
14 by the defendant?

15 A. She just yelled and told her, "bitch."

16 Q. While she was standing here?

17 A. Right.

18 Q. Was that after she put the gun down?

19 A. Right.

20 Q. She called her "bitch"?

21 A. Yes, sir.

22 Q. You heard her say that?

23 A. Yes, sir.

24 Q. After she said, "bitch," what did she do?

25 A. She just put the gun down, and she turned

1 to that.

2 THE COURT: That's not permitted,
3 Counsel. Overruled.

4 Q. (By Mr. Valdez) Are there things that you're
5 telling the jury now that are not in your
6 statement?

7 A. The only thing I didn't put in the statement
8 was the word that I heard her scream at Selena.

9 Q. And that was "bitch"?

10 A. Yes.

11 Q. But you told the police that?

12 A. I didn't tell the officer, but I told the other
13 officer because I didn't know if I told him or not.

14 Q. Which officer did you tell?

15 A. Rivera.

16 Q. Paul Rivera?

17 A. Yeah, I think, or Ray.

18 Q. Ray Rivera. And you said you told that
19 officer, but you didn't tell another officer?

20 A. No, sir. Because I did not know if I could --
21 you know, since they were older than me, I respect
22 people.

23 Q. Because they were older than you?

24 A. Yes, sir. And that word, to me, it's, you
25 know, a lot.

1 A. No, sir. The only officer I talked to was a
2 white man, and he just told me for me not to move
3 from the lobby because they are going to take me to
4 the police department.

5 Q. You don't remember talking -- telling an
6 Officer Geron that you did not see the shooting?

7 A. No, sir.

8 Q. You deny that you told Officer Geron that?

9 A. I never told nobody like that.

10 Q. Never told any officer that?

11 A. No, sir. No.

12 Q. Now --

13 MR. VALDEZ: Your Honor, I'm going to
14 object to any further writing on the diagram. The
15 court reporter is making a transcript of the
16 proceedings here, and what Mr. Tinker is doing is
17 he's writing down some parts of the testimony for
18 the jury to take into the deliberation. And the
19 proper thing to do is to read the court reporter's
20 notes if they have any question about it. So I'm
21 going to object to his writing on the diagram, any
22 further writing. What he's doing --

23 THE COURT: Excuse me, Counsel. I
24 can't see what's going on.

25 MR. TINKER: I wrote "never," "any,"

1 Q. And did you see Yolanda Saldivar fire a shot
2 out here at Selena Quintanilla Perez after she was
3 outside?

4 A. No, sir.

5 Q. May I -- and you can sit down for this part.

6 A. (Witness complies.)

7 Q. Counsel talked to you some about where there
8 are differences in your testimony today and what
9 you may have testified -- I mean, what may be in
10 your statement that you gave on the 31st of March.
11 Do you remember the prosecutor asking you that?

12 A. Yes, sir.

13 Q. Let me show you your statement that you gave,
14 and you said that the only thing that you thought
15 was different was where you had left out "you
16 bitch"?

17 A. Yes, sir.

18 Q. Now, let me ask you. As she was chasing
19 Selena, she pointed the gun --

20 MR. VALDEZ: Your Honor --

21 Excuse me.

22 I object to any reading of the
23 statement. I object to any reading of the
24 statement unless it's introduced into evidence.

25 THE COURT: Overruled.

1 A. At the motel.

2 Q. But do you remember Mr. Rivera coming out and
3 talking to you again?

4 A. Yes, sir.

5 Q. You -- I have these two statements. The first
6 one -- I've got them, both of the statements. When
7 the officer came out and talked to you, the one who
8 talked to you on the 11th of April, he was one of
9 the detectives, investigators. Do you remember
10 that?

11 A. Yes, sir.

12 Q. Did you know him before these events?

13 A. No, sir.

14 Q. And he talked to you some more and asked you
15 some more questions about what you saw, what you
16 did out there, didn't he?

17 A. Yes, sir.

18 Q. And on that date you never mentioned once what
19 you now say Yolanda Saldivar said, "you bitch" did
20 you?

21 A. No, sir.

22 Q. You didn't tell him that at all?

23 A. No, sir.

24 Q. Now, did you actually see Yolanda go to her
25 pickup or run to her pickup, get in her pickup, and

1 where these two buildings meet, right at the
2 corner. It's under -- on the bottom floor, first
3 floor.

4 Q. Were you on the first floor or the second
5 floor?

6 A. First floor.

7 Q. Okay. And you told the jury that you heard
8 something?

9 A. Yes, sir.

10 Q. What did you hear?

11 A. I heard a loud boom. At first I thought it
12 was, like, a flat tire on a truck or something, so
13 I walked --

14 Q. What did you do when you heard the boom?

15 A. I walked towards the corner here and looked
16 towards this way.

17 Q. And when you looked that way, what did you see?

18 A. I saw a girl running, from about here, running
19 across this way.

20 Q. What did the girl look like, Mr. Espinoza?

21 A. It was a young girl, wearing, like, a jogging
22 suit, light green.

23 Q. What was she doing?

24 A. She was running and screaming.

25 Q. Could you hear what she was screaming?

1 A. No. I could only hear screams.

2 Q. You couldn't make out if she was saying
3 anything?

4 A. No. No words.

5 Q. If you will, wait until I finish asking my
6 questions.

7 THE COURT: Okay. Counsel, maybe I
8 should address him.

9 Mr. Espinoza.

10 THE WITNESS: Yes, sir.

11 THE COURT: It's very important
12 because this lady here is a taking down everything
13 you're saying.

14 THE WITNESS: I'm sorry, Your Honor.

15 THE COURT: And she can't take two
16 people at one time, so that's why it's very
17 important.

18 THE WITNESS: Yes, sir.

19 MR. TINKER: Your Honor, I have a
20 question. Could he pull that mike forward?

21 THE COURT: Good idea.

22 Q. (By Mr. Valdez) What was the young girl
23 wearing?

24 A. She was wearing a kind of a -- like a jogging
25 suit.

1 Q. Did you act on that information?

2 A. Yes, I did. The people that gave me the
3 information also told me that there had been an
4 interview there locally of KORO of an elderly
5 lady that had alleged that her social security
6 checks had been stolen by Norma and cashed, and
7 the money never given to her and that charges
8 had been filed, so I proceeded to try to find
9 out if any charges had been filed against
10 Norma. And, at the same time, I talked to
11 Raul, our investigator, and he went in one
12 direction, then I went to the sheriff's
13 department to find out if there was any
14 outstanding warrants and if there was any
15 records on Norma.

16 Q. When you asked them to search to see if
17 there were records or warrants, what
18 information did you give the sheriff's
19 department?

20 A. The name Norma Martinez and her birth
21 date. They told me that the birth date is how
22 they could track it down, in regards to any --
23 any files in -- in their computer.

24 Q. Did you identify her either as Norma Marie
25 Martinez or Marie Norma Martinez?

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1 A. It was Norma Martinez.

2 Q. And with the name Norma Martinez and the
3 date of birth, they were able to come up with a
4 record on the individual?

5 A. They did. They informed me, one, that
6 there was an outstanding warrant for her, and
7 that it was -- basically, that there was a
8 warrant out for her and if I knew where she --
9 where she was.

10 Q. Did they -- was there, also, a -- yeah,
11 what was the warrant for?

12 A. It was for violation of her probation --
13 or revocation of her probation.

14 Q. Were you provided a photograph of Norma
15 Martinez by the sheriff's department?

16 A. I was.

17 Q. And did you recognize the person in that
18 photograph as being the same person who had
19 testified in this court as Norma Marie
20 Martinez?

21 A. Well, first, it was hard, but then the
22 birth -- it is the same person, and, of course,
23 the same birth date.

24 Q. You are -- Did -- Were you familiar with
25 the statement that Miss Martinez had given to

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1 tape that -- of the elderly lady, so that I
2 could find out who the elderly lady was,
3 hopefully, that I could go talk to her, okay?

4 Q. I understand.

5 A. And when they were not able to provide me
6 with the tape, or, at least, they told me that
7 they had already turned in everything they had
8 in regards during pretrial, and the Court had
9 them, I, then, went to the sheriff's office.

10 Q. When you went to the sheriff's office, you
11 said that -- you gave them what name?

12 A. Norma Martinez.

13 Q. And that date of birth of Norma Martinez?

14 A. The date of birth is what they asked me
15 for --

16 Q. Did you --

17 A. -- primarily.

18 Q. Did you ask them to check any other like
19 names or similar names to Norma Martinez?

20 A. No. I think that he did ask me, you know,
21 about where I got the birth date, and I told
22 him from the state-- in the statement, and I
23 gave him whatever the name was in the
24 statement.

25 Q. And it's your testimony that when you went

24 A. Yes, it does. Well, on Defense Exhibit
25 No. 4.

1 A. Yes.

2 Q. -- Norma Marie Martinez? And you
3 testified that you wrote the name Maria Norma
4 Martinez on the photograph and on the -- well,
5 it's on the complaint itself, correct?

6 A. When I wrote that down, I think, it's
7 because he told me that that's what the warrant
8 showed.

9 Q. Okay. And you've, also, indicated a --
10 the criminal docket sheet in Cause No.
11 90-5360-3. Is it true that that doesn't show
12 a conviction of anything on Maria Norma
13 Martinez?

14 A. You know, I cain't really read that. I
15 can say that it was reset on a plea, '91 --
16 1/30/91; and a plea on 2/26/91.

17 Q. But it doesn't show -- that docket sheet
18 doesn't show that she ever pled guilty or was
19 convicted of that case, correct, from the
20 records that were introduced?

21 A. It shows that a capias was issued or a
22 warrant was issued.

23 Q. And my question, again, Mr. Garcia: Does
24 that record that you have in your hand show
25 that she was convicted of theft?

1 A. No, it does not.

2 Q. You, also, said -- and you said that when
3 you went to look in the Warrants Department, or
4 Warrants, you said that's the one that had the
5 warrant for the revocation of probation. Was
6 it off of that case?

7 A. I don't know. He's the one that told me.
8 He would not give me the documents. He just
9 told me that there was a warrant and wanted to
10 know if I knew where she was at.

11 Q. Okay. But it's, also, your testimony
12 that the sheriff's office did not indicate --
13 did not indicate to you -- would not give you
14 the copy of the TCI-, NCIC, correct?

15 A. Would not.

16 Q. Would not do that. They are prohibited
17 from doing that?

18 A. I don't know. I think, basically, some
19 other department had it.

20 Q. Well, let me show you the corollary -- I
21 think, there's some additional information in 7
22 that's now contained in state's -- I'm sorry --
23 Defense Exhibit 8. And that, also, shows the
24 same case, does it not? Just look at the cause
25 numbers.

1 A. (Witness complies.)

2 Q. Is that the same cause number that's shown
3 in State's Exhibit 8 -- Defense Exhibit 8?

4 A. Yes.

5 Q. Is that right? Now, we've talked about
6 Defense Exhibit No. 7 not showing she was
7 convicted of theft, correct? You testified to
8 that, correct?

9 A. Yes.

10 Q. Okay. Now, look at Defense Exhibit 8.
11 Does that, now, show the same docket sheet,
12 with some more entries added to it?

13 A. Yes, it does.

14 Q. Okay. And does it, also, show that Maria
15 Norma Martinez was -- something happened to her
16 on that case. What happened on it?

17 A. Wait a minute, wait a minute. "Reassigned
18 to Court No. 1."

19 Q. Okay. That means it was transferred to
20 another county court, right?

21 A. Okay.

22 Q. Well, let me just -- Okay. What's the
23 next entry?

24 A. "12/4/95, transfer order to" --

25 Q. Okay. That's a transfer order to another